Policy and Procedure for Patients' Rights to Access, Inspect and Obtain a Copy of Their Protected Health Information

45 CFR 164.524, 45 CFR 5b.5, 5b.6

PURPOSE: To establish policy and procedure on rights of patients to access, inspect and obtain a copy of their protected health information (PHI).

POLICY: The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule provides individuals the right, under certain circumstances, to access, inspect and obtain copies of PHI about them that is maintained in a designated record set. The Privacy Act of 1974, 5 U.S.C. § 552a, and the implementing regulations at 45 CFR Part 5b, also provide patients the right to access, inspect, and obtain copies of records about them that is maintained in a system of records. The policy of IHS is to provide patients their maximum rights under these statutes.

With respect to access by or on behalf of minors, please refer to the Policy and Procedure on Protected Health Information of Unemancipated Minors.

PROCEDURE: The following procedures shall be used when patients request to access, inspect and obtain a copy of their PHI.

A. **Processing the Request**

1. A patient must submit a written request to the Service Unit Director/Chief Executive Officer (SUD/CEO) or designee of the facility that maintains the PHI, [1] specifying the records the patient would like notification of or access to.

2. At the time of the request, the patient must designate a representative in writing who would be willing to review the record and inform the patient of its contents. The representative may be a physician or other responsible individual.

3. If the patient requests access to a record pertaining to him or her, and is accompanied by another individual, the patient must affirmatively authorize the presence of the other individual during any discussion of a record to which access is requested.

4. In addition to requesting notification and access to records, the patient may also request copies be made of such records in accordance with the fee schedule set forth at 45 CFR 5b.13.

5. The SUD/CEO or designee must act on the request within 30 days of its receipt if the information is maintained or accessible on-site and within 60 days if it is not. A one-time 30-day extension may be granted by the SUD/CEO or designee in writing, provided that within the respective 30-day or 60-day time frame, the SUD/CEO or designee provides the patient with a written statement of the reason(s) for the delay and the date by which IHS will complete its action on the request. IHS shall also provide access to information

[1] For Areas that provide CHS directly through the Area Office, references to the SUD/CEO should be considered references to the Area Director's designee, as applicable.

in a designated record set of its contractor(s) (business associate(s)) unless the information is the same as information maintained by IHS.

6. All requests, designations, and correspondence relating to the patient's request for access should be maintained in the patient's health record.

B. **Access Granted in Whole or in Part**

1. If direct access is granted, in whole or in part, the SUD/CEO or designee shall inform the patient in writing that s/he may inspect and/or obtain a copy of his or her PHI.

2. IHS is only required to produce the PHI once per request even if the record is maintained in more than one location or in more than one designated set of records.

3. IHS must provide the information in the requested form or format if it is readily producible in that form or format. If it is not, IHS must produce a readable hard copy in another form or format upon which both the patient and IHS have agreed.

4. Subject to the patient's agreement in advance, a summary or an explanation of the PHI may be provided in lieu of the underlying information, but the patient retains the right of access to both summaries and underlying information.

5. Access must be provided at a mutually convenient time and place for inspection or copying. If requested, IHS must mail the PHI, but may charge a cost-based fee for copying, in addition to postage. (See the fee schedule at 45 CFR 5b.13.)

6. When a copy is provided, the date on which the copy is delivered should be entered in the patient chart.

7. The Policy and Procedures for Verification of Identity Prior to Disclosure of Protected Health Information must be followed.

C. **Limited Situations Resulting in a Denial of Access**

Generally, requests for notification of and access to a patient's PHI made by the subject patient should be honored. There are limited situations in which access to a patient's record may be denied or suspended.

1. IHS may deny access to information compiled in reasonable anticipation of, or for use in, civil, criminal, or administrative actions or proceedings. **Note:** This type of information should never be in the patient's medical record. Should such information be found in the patient's medical record, contact the Regional Attorney's Office.

2. IHS may deny a request to access PHI, because IHS does not maintain the requested PHI; however, if IHS knows where it is maintained, IHS shall inform the patient where the PHI is maintained and direct the request to that place.

D. **Limited Situations in which Access is Provided or Denied to the Patient's Designated Representative**

1. IHS may initially deny direct access to the patient and utilize the patient's designated representative to review the records if IHS determines that, or cannot determine whether, providing the patient with direct access is likely to have an adverse effect on the patient. In such cases, the health record will be sent to the patient's designated representative and the patient will be notified in writing that the record has been sent to the designated representative.

2. If IHS has sent the record to the patient's designated representative, the designated representative should consider whether there would be any adverse effects on the patient. The patient will be allowed access to his or her record consistent with a determination by the patient's designated representative of the manner of disclosure, if any, that would limit any likely adverse effect on the patient.